Filed 7/25/19 L.G. v. Superior Court CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

L.G., Petitioner, v. THE SUPERIOR COURT OF ALAMEDA COUNTY, Petitioner; ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Real Party in Interest.	A157122 (Alameda County Super. Ct. No. JD03049601)

L.G. (mother) has filed a petition for an extraordinary writ following the issuance of an April 17, 2019 order that declared her child J.G. to be a dependent of the court, removed the child from her custody, bypassed reunification services, and set a hearing under Welfare & Institutions Code section 366.26[1] to consider termination of parental rights and the child's permanent placement as adoption.[2]

Mother seeks a new dispositional hearing on the ground that the juvenile court committed prejudicial error in denying her motion to compel real party in interest Alameda County Social Services Agency (agency) to produce discovery at no cost to

[1] All further unspecified statutory references are to the Welfare & Institutions Code.

[2] The April 17, 2019 order also removed the child from father's custody and ordered the bypass of reunification services. Father has not filed a writ petition.

mother because of her indigency. In support of her argument, mother has filed a request for judicial notice asking us to consider the records in certain appeals filed in this court in which the same discovery issue has been presented to the various divisions. Pending our resolution of the petition, mother requests a temporary stay of the section 366.26 hearing set for August 15, 2019. The agency opposes the petition.

We conclude that we need not resolve mother's complaint concerning the method by which the agency may meet its discovery and document production obligations as any alleged error in the court's ruling was harmless under any standard of prejudice. (*Chapman v. California* (1967) 386 U.S. 18, 24 (*Chapman*); *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).) Accordingly, we deny the petition on the merits, and deny as moot the requests for judicial notice and a temporary stay of the section 366.26 hearing.

FACTS[3]

A. Background

Mother gave birth to J.G. (child) in December 2016. Mother was arrested on December 7, 2018 due to a domestic violence incident between mother and her boyfriend in the presence of the child, and agency staff detained the 23-month-old child the next day. The child's father was then incarcerated and there was no one willing or able to care for the child. Three days later, the agency filed a section 300 petition asking the court to find that the child was described by subdivisions (b) (failure to protect) and (j) (abuse of sibling). At the detention hearing, the juvenile court found the agency had made a prima facie showing that the child was described by section 300, ordered that the child was to remain in agency custody, appointed counsel for mother, father, and the child, and set an uncontested jurisdictional and dispositional hearing for January 2, 2019.

On December 28, 2018, the agency filed its jurisdiction and disposition report for the January 2 hearing, recommending the court find the child was described in section

---

[3] The facts are taken from the various reports filed by the agency in the juvenile court. Because the child's father is not a party to this writ proceeding, our factual recitation focuses almost exclusively on mother's circumstances. Also, we set forth only those facts as are necessary to resolve this writ proceeding

300, deny (bypass) reunification services for mother (§ 361.5, subd. (b)(7)), and set a section 366.26 hearing to determine the child's permanent placement as adoption. The agency attached to its report the police report concerning mother's December 7 arrest (Attachment A) and juvenile court documents concerning a previous dependency proceeding for the child's older sibling, G.N., born July 2015 (Attachment B). In the earlier dependency proceeding concerning G.N., the court terminated the parents' reunification services on February 1, 2018, based on a finding that the parents had received more than six months of services and there was no substantial probability that the child would be returned to their custody if services were extended. Following a section 366.26 hearing on June 7, 2018, the court ordered G.N.'s permanent placement to be a legal guardianship.

At the January 2, 2019 hearing originally scheduled for an uncontested jurisdictional and dispositional hearing, mother appeared in court with counsel. At mother's request, the case was continued for a contested hearing set for February 15.

B. Discovery Proceedings

A week before the February 15 hearing, mother's counsel emailed agency counsel a request for documents in 23 different categories. The agency social worker assigned to the case informed mother's counsel that she could review the entire file and that some of the requested documents would be included in the agency's addendum report. Mother's counsel was also told that the agency charged a postage fee of $4.95 for documents requested to be mailed plus a copy charge of 10 cents per page, or 50 cents per page for documents previously filed with the juvenile court (the same rate the juvenile court clerk's office charged (Gov. Code, § 70627, subd. (a)). Agency counsel also informed mother's counsel that the agency's reports and attached documents contained information and documents the agency was required to produce absent a parent's discovery request, and that counsel's request for other documents was untimely.

On February 11, mother filed a motion to compel discovery based on the agency's failure to provide copies of the requested documents at no cost. She asserted she was seeking documents relevant to the agency's dispositional recommendation of bypassing

reunification services, including but not limited to documents regarding mother's progress in services and visitation logs. Mother requested the court order the agency to provide the requested documents "at no cost" due to her indigency. At a February 13 hearing, the court continued the contested jurisdictional and dispositional hearing to March 15, but maintained the February 15 hearing date for further consideration of mother's discovery motion. The court noted the agency had filed an addendum report on February 11 (for the February 15 hearing), which had attached the following documents: (1) the analyses of mother's tests for controlled substances (Attachment A); and (2) the "visit summary log" describing mother's visits with the child (Attachment B). Agency counsel also reported that any information favorable to mother would be provided to mother's counsel that same day, but it was the agency's position it had no obligation to disclose "the child welfare worker's narratives, delivered service logs, and case notes."

At the February 15 hearing, mother's counsel confirmed she had gained access to the agency's addendum report and its attached documents through the court's website. The court then asked mother's counsel to identify with particularity "the final list of items here that are outstanding or subject to this motion." Mother's counsel replied that "[t]he biggest scope of discovery that we are moving to compel are the delivered service logs, the DSLs. Sometimes they are called case narratives and sometimes they are generally considered case notes by the child welfare workers." Mother's counsel also asked for updates as to previously produced documents attached to the agency's reports and the "actual evidence" underlying any "summary report," which "is being relied upon" to support "the basis" for example, of the agency's "bypass recommendation." Lastly, mother's counsel asked that the agency file a "statement of compliance," indicating affirmatively that agency staff had searched for certain items and did not have those items.

Agency counsel responded that the agency had provided all documents and information that was responsive to mother's requests for documents "relevant to the Agency's disposition recommendation of bypassing reunification services including, but not limited to, documents regarding parent's progress in services and visitation logs." As

to the "delivered service logs," agency counsel was willing to provide those documents to mother in accordance with the agency's procedure, which required agency staff to review and redact the documents, and required mother to pay 10 cents per page for hard copies of the documents. Agency counsel also informed the court that the agency did not have any "NA or AA information" concerning the mother, the agency had already provided mother's counsel four drug test results (January 16, January 18, January 22, and January 25) and "visitation logs," and the agency would disclose any additional test results and visitation logs it later obtained. Thus, agency counsel identified what remained to be resolved as solely mother's request that the agency disclose its "delivered services logs" and provide copies to mother "free of charge." Based on the representations of agency counsel that "there is nothing else," mother's counsel was satisfied concerning the agency's statement regarding the scope of the outstanding discovery. The court accepted the statement of agency counsel and "so agreed" that the only outstanding discovery issue was the disclosure of the delivered service logs "and the cost issue." Following extensive argument, the court ruled mother would be given "full access" to "whatever it is you need" for adequate representation, and therefore, the only remaining issue was "who is going to pay . . . ." The court ordered the parties to meet and confer and the matter was continued to March 6.

At the March 6 hearing, the court heard extensive argument regarding failed attempts to resolve the discovery dispute. Agency counsel informed the court that mother's counsel confirmed she only needed the delivered service logs or case notes. To that end, agency counsel had been bringing the requested delivered service logs to court every day "in anticipation of [mother's counsel] indicating what days she wanted to look at them and/or receive them." However, mother's counsel did not want to comply with agency procedure, and requested that agency counsel provide copies in an electronic version. Agency counsel refused to do so, and instead told counsel that she could avoid copying costs by making her own electronic copies at the agency's office. However, mother's counsel again requested the agency provide her with electronic copies in compliance with the court's order. Following further argument, the court found the

agency had fulfilled its obligations to turn over favorable information and to disclose requested documents by providing mother's counsel with "opportunities to review, has made offers for counsel to make copies, [counsel] has brought the documents to the courtroom" and "has them available now." The court told mother's counsel she did not have to "comply with the [a]gency procedure and put forth the dollar and eighty cent check [for 18 pages of delivered services logs] in order to obtain discovery." Rather, the court explained how mother's counsel could review the documents and obtain copies:

"You have the opportunity to review it. My understanding is it's here now. You can look at it now. You can produce copies of it yourself however you want to. [¶] If you don't want to do that now, if you want to review it, it's been offered to be reviewed at their location. You sound like you don't want to do that. But that's an alternative for you as well. [¶] You can take a moment and not make copies. You can review it and review it at your leisure here or, otherwise, if you want hard copies, my understanding, based on what I've heard, is that the [a]gency will produce that, but there will be a cost. [¶] So those are your alternatives. The Court will not direct expressly which one you avail yourself of. That's for you to decide."

In its March 6 minute order, the court denied mother's motion to compel discovery, ruling: "The court has considered the argument regarding due process. There is no finding of any violation of local rule. The [a]gency has fulfilled its obligations so far as to disclosures." The matter was continued to March 15 for the contested jurisdictional and dispositional hearing.

C. Jurisdictional and Dispositional Hearings

In the midst of the discovery litigation, on February 25, the agency filed a first amended section 300 petition, which was later amended at the March 15 hearing. It was alleged, in pertinent part, that the child was described in subdivisions (b) (failure to protect) and (j) (abuse of sibling), based on mother's conduct as follows: "[B.]-1 On 12/07/[2018], the mother . . . and her boyfriend were engaged in a domestic violence dispute while in the presence of the minor . . . The mother and her boyfriend were hitting one another within reach of the minor and placed the minor at risk of being

injured." "[B.]-2 On 12/07/[2018], the mother . . . was arrested due to inflicting corporal injury and child endangerment. As a result, the minor was left without a parent or guardian who can supervise or protect the child adequately." "[B.]-3 The mother, . . ., has relapsed on methamphetamines and is struggling with re-engaging in substance abuse treatment or services." "[B.]-4 The mother does not have a stable living arrangement at this time or financial resources to care for the minor." "[J.]-1 The mother . . . and father . . ., have an older [child] . . . [born July 2015,] who was removed from their care due to the mother and her boyfriend being in a stolen vehicle [in] pursuit [sic] by law enforcement. The mother and father were also using methamphetamines. The mother successfully reunified with the [older child] on 04/26/2017. However, on 11/30/2017 the [a]gency filed a [section] 387 Petition due to concerns the mother left [the older child] with the paternal grandmother and did not return. The mother had also relapsed on methamphetamines and had no stable home. . . . On 02/01/2018, reunification services were not offered to the mother . . . and a permanent plan was ordered."

Thereafter, on March 6, the agency filed another addendum updating the court on mother's circumstances. In this report agency staff recommended that the court find the child was described in section 300, subdivisions (b) and (j), declare the child a dependent of the court, and further find, by clear and convincing evidence, that reunification services for mother should be denied (bypassed) for the following reasons: (1) mother failed to reunify with the child's older sibling and mother had not subsequently made a reasonable effort to treat the problems that led to the removal of that child from her custody (§ 361.5, subd. (b)(10)), and (2) mother had a history of extensive, abusive, and chronic use of drugs and resisted prior court-ordered treatment during the three years immediately prior to the filing of the petition (§ 361.5, subd. (b)(13)).

At the March 15 hearing, mother was present and represented by counsel. The agency asked the court to take jurisdiction of the child based on true findings on the allegations in the first amended petition (filed February 25), as further amended at the March 15 hearing (which amendments were later reflected in a second amended petition

filed on March 19). Mother's counsel indicated her agreement with the petition amendments made at the hearing.

In support of its jurisdictional recommendations, the agency asked the court to admit into evidence the following documents: (1) the December 12, 2018 detention report (filed that day); (2) the January 2, 2019 jurisdiction disposition report (filed on December 28, 2018), with all attachments; (3) the February 15, 2019 addendum report (filed on February 11, 2019), with all attachments; and (4) the March 15, 2019 addendum report (filed on March 6, 2019). Mother's counsel had no objections to the admission of any of the agency's evidence. However, the child's counsel made "an objection, for the record" to the admission of "Attachment B" [court documents concerning the child's older sibling], attached to the January 2, 2019 jurisdiction disposition report, on the ground that those documents disclosed information regarding a sibling without a request for disclosure. The court noted and overruled the objection, and received the agency's reports into evidence. Mother's counsel indicated mother would "submit" to the petition.

The court, having read and considered the agency reports admitted into evidence, found the child was described by section 300, subdivisions (b) and (j), based on its true findings of the petition's allegations as amended through the March 15 hearing. The court continued the matter for a dispositional hearing on April 17, and specifically ordered mother to appear.

Mother did not appear at the April 17 dispositional hearing, but was represented by counsel. Father was incarcerated and the court accepted his counsel's representation that, based on father's letters, father waived his right to be present. The agency asked the court to deny (bypass) reunification services for the parents based on their failure to reunify with the child's older sibling and to adopt the agency's other recommended dispositional findings on pages 10 through 14 of the March 15 addendum report (that was filed on March 6). In support of its dispositional recommendation, the agency again asked the court to admit into evidence the same four reports admitted at the March 15 hearing. When the court inquired as to the whereabouts of mother, her counsel replied: "I'm not sure where [mother] is. [¶] I'm heartbroken to say I'm continuing my objection

from the previous contest date, objecting to the disposition recommendation, and I'm also objecting to the admission of the reports that contain materials from the sibling's case . . . without having gone through the proper procedure to disclose from a sibling case." In response to the court's further inquiry regarding mother's position, her counsel stated, "Just my continuing objection to the disposition recommendation for bypass." When the court sought to confirm that neither parent sought a contested dispositional hearing, but that counsel were "[j]ust lodging objections for the record," mother's counsel did not reply but father's counsel confirmed the court's statement that no contested hearing was being sought.

After noting it had already made jurisdictional findings on March 15, the court made dispositional findings; it declared the child to be a dependent of the court and found, by clear and convincing evidence, that the child must be removed from the physical custody of the parents. The court further found, by clear and convincing evidence, that reunification services should be denied (bypassed) for mother based on her failure to reunify with the child's older sibling, mother's history of extensive, abusive, and chronic use of drugs or alcohol, and mother's resistance to prior court-ordered treatment during the three years immediately prior to the filing of the petition.

In its April 17 written order, the court adopted the recommended dispositional findings and orders as set forth in the agency's report prepared for the March 15 hearing as further modified at the April 17 hearing. The court specifically declared the child a dependent of the court, granted the agency custody of the child for placement in a suitable family home or private institution, and denied (bypassed) reunification services for mother, citing to section 361.5, subdivisions (b)(10) and (b)(13). The court set a section 366.26 hearing for August 15, 2019.

DISCUSSION

By her writ petition, mother seeks an order vacating the April 17 order setting the section 366.26 hearing and remand for a new dispositional hearing because the juvenile court refused to require the agency to provide requested discovery "at no cost" to mother due to her indigency. In support of her requested relief, mother insists this case "is *not*

about" either her right to discovery, the agency's duty to disclose or produce documents, or "who is required to pay for the production of documents." Instead, mother argues the sole issue "is quite simple – what is the most efficient and cost-effective method of transmitting" the documents to her counsel. According to mother, the agency's position is that mother's counsel must view the documents, decide which documents are needed, and either scan the documents or pay the agency 10 cents per page for hard copies. Mother asks this court to order the agency to scan the documents and either email the documents to counsel or save the documents to a USB drive or a CD, provided by mother's counsel, which would eliminate the copying costs and save mother's counsel the time to travel to the agency's office to view the documents.

However, the sole issue before us is whether mother is entitled to a new dispositional hearing because the court committed prejudicial error by denying her discovery motion. We conclude mother is not entitled to a new dispositional hearing as she has failed to demonstrate any prejudicial error in the discovery ruling under either the test for state law error (see *Watson, supra*, 46 Cal.2d at p. 836), or under the "beyond a reasonable doubt" test (see *Chapman, supra,* 386 U.S. at p. 24) "applicable to denial of discovery that implicates the federal constitutional guarantee of due process . . . ." (*People v. Cook* (2006) 39 Cal.4th 566, 616; see also Cal. Const., art. VI, § 13 ["[n]o judgment shall be set aside, or new trial granted, in any cause . . . for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice"].) In considering the matter of prejudice, we are cognizant that once the court denied mother's discovery motion she had no obligation to later object to the court's ruling in order to preserve her claim that the court erred. However, we find it dispositive that there was no assertion at the April 17 dispositional hearing that mother's ability to challenge the agency's recommendations (removal of the child and bypassing of reunification services) was in any way impeded by the court's denial of her discovery motion.

In her reply, mother argues that harmless error analysis is improper because there is no way, "other than speculation", to ascertain from the record what the outcome at the dispositional hearing would have been had the agency complied with its duty to provide discovery in a timely matter. In support of her argument, she cites to *In re Armando L.* (2016) 1 Cal.App.5th 606, a case in which the juvenile court precluded mother from presenting evidence at a section 364 hearing to challenge dismissal of the juvenile dependency proceeding and exit orders. (*Id*. at pp. 614, 617.) The appellate court reversed and remanded because mother had a right to present evidence at a contested section 364 hearing and it could not be discerned what evidence mother could have presented (since she was denied the opportunity to present any evidence). (*Id.* at pp. 620–621.) The appellate court declined the agency's invitation to review the record for harmless error as "there was a void in the evidence created by the juvenile court's failure to have a contested hearing." (*Id.* at p. 620.) Unlike the situation in *In re Armando L*., the record here demonstrates that any void in the evidence was not created by the court's denial of mother's discovery motion. At the April 17 proceeding, which had been set for a dispositional hearing, mother failed to appear and was represented by counsel. We see nothing in the record or the juvenile court's comments that precluded counsel from requesting a continuance due to mother's absence, presenting evidence and witnesses challenging the agency's recommendations, or making arguments as to how the denial or delay in receiving any outstanding discovery had impacted mother's ability to challenge the agency's recommendations. (See *In re Axsana S.* (2000) 78 Cal.App.4th 262, 269 [4] [court found no due process violation where juvenile court conducted dispositional hearing and denied father reunification services, while his attorney was present but he was absent].) Thus, mother's reliance on *In re Armando L.* is misplaced.

While we are troubled by the timeliness of the discovery produced in this case, we must reject mother's argument that harmless error analysis does not apply because the

---

[4] *In re Axsana S.*, *supra*, 78 Cal.App.4th 262, was disapproved on another ground in *In re Jesusa V.* (2004) 32 Cal.4th 602, 624, footnote 12.

discovery issue concerns a "structural error."[5] According to mother, her challenge to the timeliness and methods by which the agency and its counsel meet the discovery and document production obligations under California Rules of Court, rule 5.546, "is a systemic problem" that creates a structural defect in the manner in which hearings proceed in the juvenile court, citing to *People v. Flood* (1998) 18 Cal.4th 470, 493. We disagree. "[S]tructural errors," which " 'defy analysis by harmless-error standards' and require reversal without regard to the strength of the evidence or other circumstances," "include the total deprivation of the right to counsel at trial, a biased judge, unlawful exclusion of members of the defendant's race from a grand jury, denial of the right to self-representation at trial, and denial of the right to a public trial." (*Ibid*.) However, we are not faced with a structural error, but a purported trial error subject to harmless error analysis. (See *People v. Pinholster* (1992) 1 Cal.4th 865, 941[6] [court found failure to provide timely discovery harmless because there was "no suggestion that the defense would have been different had defendant been aware of [belated discovery] before trial," and "[a]s a matter of due process there was no suppression of material evidence favorable to the accused, and any failure to timely disclose [the evidence] was harmless and did not undermine the reliability of the proceedings"].)

Because mother has not shown any prejudicial error requiring us to reverse the April 17 dispositional order, we deny her petition on the merits and do not reach her complaint concerning the method by which the agency may meet its discovery and

---

[5] At oral argument, mother's counsel also expressed serious concerns that transcend this case about the methods used by the agency and its counsel in meeting the mandated discovery and document production obligations under California Rules of Court, rule 5.546. However, the remedy for counsel's concerns is to seek change through either legislative action, the Judicial Council, or local court rules.

[6] *People v. Pinholster*, *supra*, 1 Cal.4th 865, was disapproved on another ground in *People v. Williams* (2010) 49 Cal.4th 405, 459.

document production obligations.[7] Our decision here "is bolstered by the strong . . . interest, expressed by the Legislature itself, that dependency actions be resolved expeditiously. [Citations.] That goal would be thwarted if the [dispositional hearing] had to be redone without any showing the new proceeding would have a different outcome." (*In re Jesusa V.*, *supra*, 32 Cal.4th at p. 625.)

DISPOSITION

The petition for an extraordinary writ is denied on the merits. (Welf. & Inst. Code, § 366.26, subd. (*l*); Cal. Rules of Court, rule 8.452(h).) The requests for judicial notice and a temporary stay are denied as moot. Our decision is final immediately. (Cal. Rules of Court, rules 8.452(i) & 8.490(b).)

[7] On July 23, 2019, California Juvenile Court Advocates submitted a request to file an amicus brief in support of mother's request for writ relief. We deny the request to file the amicus brief as it is not necessary to our decision.

_____

Petrou, J.

WE CONCUR:

_____

Siggins, P. J.

_____

Fujisaki, J.

L.G. v. Superior Court of Alameda County/ A157122